

Limitations and Restrictions on Gifts, Honoraria, Travel and Loans

A Fact Sheet For

- ❖ Elected State Officers and Candidates for
Elective State Office

Fair
Political
Practices
Commission

428 J Street
Suite 620
Sacramento CA 95814

Phone

(866) ASK-FPPC

Fax

(916) 322-3711

Web site

www.fppc.ca.gov

INTRODUCTION

The Political Reform Act¹ (the "Act"), imposes limits on gifts, prohibits honoraria, and imposes limits and other restrictions on personal loans received by elected state officers and candidates for elective state offices.²

This fact sheet summarizes the major provisions of the Act concerning gifts, honoraria, travel and loans. You should not, however, rely on the fact sheet alone to ensure compliance with the Act. If you have any questions, contact the Fair Political Practices Commission at (866) ASK-FPPC or visit our web site at www.fppc.ca.gov. Commission advice letters from 1986 to present are available on Lexis-Nexis at "CA FAIR" under California Library or on Westlaw at "CA-ETH."

1/ Government Code Sections 81000-91014. Commission regulations appear at 2 California Code of Regulations Section 18000, et seq.

2/ This fact sheet is applicable to the following elective state offices: Governor, Lieutenant Governor, Attorney General, Insurance Commissioner, Controller, Secretary of State, State Treasurer, Superintendent of Public Instruction, Member elected to the Board of Administration of the Public Employees' Retirement System, Member of the Legislature, and Member of the Board of Equalization.

GIFTS

Limitations

Elected state officers and candidates for elective state offices are subject to two gift limits:

1. Gifts from any single lobbyist or lobbying firm may not exceed \$10 in a calendar month. (Sections 86201-86204.)

For purposes of the \$10 lobbyist/lobbying firm gift limit, you are a “candidate” if you are listed on the ballot or have qualified to have write-in votes counted by election officials, or have received a contribution or made any expenditure, or have given your consent for any other person to receive contributions or make expenditures on your behalf, for the purpose of seeking nomination or election to any elective state office, whether or not you have announced your candidacy or filed a declaration of candidacy. (Section 82007.)

2. Gifts from any other single source may not exceed \$340 in a calendar year. (Section 89503.)³

For purposes of the \$340 gift limit, you become a “candidate” when you file a statement of organization (Form 410) as a controlled committee for the purpose of seeking elective office, a candidate intention statement (Form 501), or a declaration of candidacy, whichever occurs first. If you are an unsuccessful candidate, you will no longer be subject to the gift limit when you have terminated your campaign filing obligations, or after certification of election results, whichever is earlier. (Sections 84225 and 89503(b); Regulation 18451.)

What is a “Gift”?

A “gift” is any payment or other benefit provided to you that confers a personal benefit for which you do not provide goods or services of equal or greater value. A gift includes a rebate or discount in the price of anything of value unless the rebate or discount is made in the regular course of business to members of the public. (Section 82028.)

Except as discussed below, you have “received” or “accepted” a gift when you know you have actual possession of the gift or when you take any action exercising direction or control over the gift, including discarding the gift or turning it over to another person. (Regulation 18941.)

^{3/} The gift limit is adjusted biennially to reflect changes in the Consumer Price Index. For 2003-2004, the gift limit is \$340. (Section 89503; Regulation 18940.2.) Gifts from a single source that aggregate \$50 or more must be disclosed, and gifts aggregating \$340 or more received by an official may subject the official to disqualification with respect to the source. (Section 87103(e).)

GIFTS

Continued

Exceptions

The Act and Commission regulations provide exceptions for certain types of gifts. (Section 82028; Regulations 18940-18946.5.) **The following are not subject to any gift limit and are not required to be disclosed on a statement of economic interests (Form 700):**

1. Gifts which you return (unused) to the donor, or for which you reimburse the donor, within 30 days of receipt. (Section 82028(b)(2); Regulation 18943.)

2. Gifts which you donate (unused) to a non-profit, tax-exempt (501(c)(3)) organization or a government agency within 30 days of receipt without claiming a deduction for tax purposes. (Section 82028(b)(2); Regulation 18943.)

3. Gifts from your spouse, child, parent, grandparent, grandchild, brother, sister, parent-in-law, brother-in-law, sister-in-law, aunt, uncle, niece, nephew, or first cousin or the spouse of any such person, unless he or she is acting as an agent or intermediary for another person who is the true source of the gift. (Section 82028(b)(3); Regulation 18942(a)(3).)

4. Gifts of hospitality involving food, drink or occasional lodging which you receive in an individual's home when the individual or a member of his or her family is present. (Regulation 18942(a)(7).) Such hospitality provided by a lobbyist is a gift if it is paid for or reimbursed by the lobbyist employer or if the lobbyist deducts the cost as a business expense. (Regulation 18630.)

5. Gifts approximately equal in value exchanged between you and another individual (other than a lobbyist) on holidays, birthdays, or similar occasions. (Regulation 18942(a)(8).)

6. Informational material provided to assist you in the performance of your official duties, including books, reports, pamphlets, calendars, periodicals, videotapes, or free admission or discounts to informational conferences or seminars.

"Informational material" may also include scale models, pictorial representations, maps, and other such items, provided that if the item's fair market value is more than \$340, you have the burden of demonstrating that the item is informational. In addition, on-site demonstrations, tours, or inspections designed specifically for public officials are considered informational material, but this exception does not apply to meals or to transportation to the site unless the transportation is not commercially available. (Section 82028(b)(1); Regulations 18942(a)(1) and 18942.1.)

7. A bequest or inheritance. (Section 82028(b)(5); Regulation 18942(a)(5).)

GIFTS

Continued

8. Campaign contributions, including rebates or discounts received in connection with campaign activities. (Section 82028(b)(4); Regulation 18942(a)(4).) However, campaign contributions must be reported in accordance with the campaign disclosure provisions of the Act and are subject to the contribution limitations imposed by the Act.

9. Personalized plaques and trophies with an individual value of less than \$250. (Section 82028(b)(6); Regulation 18942(a)(6).)

10. Tickets to attend fundraisers for campaign committees or other candidates, and tickets to fundraisers for organizations exempt from taxation under Section 501(c)(3) of the Internal Revenue Code. (Regulation 18946.4.)

11. Free admission, refreshments, and similar non-cash nominal benefits provided to you at an event at which you give a speech, participate in a panel or seminar, or provide a similar service. Transportation within California, and any necessary lodging and subsistence provided directly in connection with the speech, panel, seminar, or similar service, are also not considered gifts. (Regulation 18942(a)(11).)

12. Passes or tickets that provide admission or access to facilities, goods, services, or other benefits (either on a one-time or repeated basis) that you do not use and do not give to another person. (Regulation 18946.1.)

13. Gifts provided directly to members of your family unless you receive direct benefit from the gift or you exercise discretion and control over the use or disposition of the gift. (Regulation 18944.) (Note: In most cases, the full amount of a gift made to you and your spouse must be counted for purposes of disclosure and the gift limits. However, see the discussion below regarding wedding gifts.)

14. Gifts provided to your government agency. This may include passes or tickets to facilities, goods, or services, travel payments, and other benefits. However, certain conditions must be met before a gift received by an official through his or her agency would not be considered a gift to the official. (Regulations 18944.1-18944.2.) Contact the FPPC for detailed information.

15. Generally, payments made by a third party (other than a lobbyist) to co-sponsor an event that is principally legislative, governmental or charitable in nature. Payments made by a single source totaling \$5,000 or more in a calendar year for this type of event must be reported if the payments are made at the behest of (at the request of, or in consultation or coordination with) an elected official. The report must be made to the elected official's agency, and then forwarded to the FPPC. (Section 82015(b)(2)(B)(iii).) Contact the FPPC for detailed information.

16. Food, shelter, or similar assistance received in connection with a disaster relief program. The benefits must be received from a governmental agency or charity and must be available to the general public. (Regulation 18942(a)(10).)

GIFTS

Continued

Reportable Gifts Not Subject to Limits

The following exceptions are also applicable to gifts. You may be required to report these items on a statement of economic interests (Form 700) and they may subject you to disqualification:

1. Certain payments for transportation, lodging, and subsistence. Travel payments are discussed below.

2. Wedding gifts are not subject to the \$340 gift limit, but they are subject to the \$10 lobbyist/lobbying firm gift limit. In addition, wedding gifts are reportable. However, for purposes of valuing wedding gifts, one-half of the value of each gift is attributable to each spouse, unless the gift is intended exclusively for the use and enjoyment of one spouse, in which case the entire value of the gift is attributable to that individual. (Regulation 18946.3.)

3. A prize or award received in a bona fide competition not related to your official status is not subject to the gift limit, but must be reported as income if the value of the prize or award is \$500 or more. (Regulation 18946.5.)

4. Passes or tickets that provide admission or access to facilities, goods, services, or other benefits are reportable and subject to the gift limit if you use them or give them to another person.

- ❖ The value of a pass or ticket that provides one-time admission is the face value of the pass or ticket, or the price which would be offered to the general public. (Regulation 18946.1(a).)
- ❖ The value of a pass or ticket that provides repeated admission or access to facilities, goods, services, or other benefits is the fair market value of your actual use of the pass or ticket, including guests who accompany you and who are admitted with the pass or ticket, plus the fair market value of any possible use by any person to whom you transfer the privilege or use of the pass or tickets. (Regulation 18946.1(b).)

HONORARIA

The Prohibition

Elected state officers and candidates for elective state offices may not accept honoraria payments. (Section 89502.)

For purposes of the honoraria prohibition, you become a “candidate” when you file a statement of organization (Form 410) as a controlled committee for the purpose of seeking elective office, a candidate intention statement (Form 501), or a declaration of candidacy, whichever occurs first. If you are an unsuccessful candidate, you will no longer be subject to the honoraria prohibition when you have terminated your campaign filing obligations, or after certification of election results, whichever is earlier. (Sections 84225 and 89503(b); Regulation 18451.)

What is an "Honorarium"?

An “honorarium” is any payment made in consideration for any speech given, article published, or attendance at any public or private conference, convention, meeting, social event, meal, or like gathering. (Section 89501.)

A “speech given” means a public address, oration, or other form of oral presentation, including participation in a panel, seminar, or debate. (Regulation 18931.1.)

An “article published” means a nonfictional written work: 1) that is produced in connection with any activity other than the practice of a bona fide business, trade, or profession; and 2) that is published in a periodical, journal, newspaper, newsletter, magazine, pamphlet, or similar publication. (Regulation 18931.2.)

“Attendance” means being present during, making an appearance at, or serving as host or master of ceremonies for any public or private conference, convention, meeting, social event, meal, or like gathering. (Regulation 18931.3.)

Exceptions

The Act and Commission regulations provide certain exceptions to the prohibition on honoraria. (Section 89501; Regulations 18930-18933.) **The payments described below are not prohibited and are not required to be disclosed on a statement of economic interests (Form 700):**

1. An honorarium that you return (unused) to the donor or the donor’s agent or intermediary within 30 days. (Section 89501(b); Regulation 18933.)
2. An honorarium that is delivered to the State Controller within 30 days for donation to the General Fund for which you do not claim a deduction for income tax purposes. (Section 89501(b); Regulation 18933.)
3. A payment that is not delivered to you but is made directly to a bona fide charitable, educational, civic, religious, or similar tax-exempt, non-profit organization. However:
 - You may not make the donation a condition for your speech, article, or attendance;
 - You may not claim the donation as a deduction for income tax purposes;

HONORARIA

Continued

- You may not be identified to the non-profit organization in connection with the donation; and
- The donation may have no reasonably foreseeable financial effect on you or on any member of your immediate family. (Regulation 18932.5.)

4. A payment received from your spouse, child, parent, grandparent, grandchild, brother, sister, parent-in-law, brother-in-law, sister-in-law, nephew, niece, aunt, uncle, or first cousin, or the spouse of any such person. However, a payment that would be considered an honorarium is prohibited if one of these persons is acting as an agent or intermediary for someone else. (Regulation 18932.4(b).)

5. Items 6, 8, 9, and 11 under “Exceptions to the Definition of ‘Gift,’” discussed earlier in this fact sheet.

Exceptions Which May Be Reportable as Income or Gifts

The following payments are not considered “honoraria” but may be reportable and can subject you to disqualification:

1. Payments received for a comedic, dramatic, musical, or other similar artistic performance, and payments received for the publication of books, plays, or screenplays. (Regulation 18931.1-18931.2.) However, such payments are reportable income.

2. Income earned for your personal services if the services are provided in connection with a bona fide business, trade, or profession — such as teaching, practicing law, medicine, insurance, real estate, banking, or building contracting — and the services are customarily provided in connection with the business, trade, or profession.

This exception does not apply if the sole or predominant activity of the business, trade, or profession is making speeches. In addition, you must meet certain criteria to establish that you are a bona fide business, trade, or profession (such as maintenance of business records, licensure, proof of teaching position) before a payment received for personal services which may meet the definition of honorarium would be considered earned income and not an honorarium. (Section 89501(b); Regulations 18932-18932.3.) Earned income is required to be reported. Contact the FPPC for detailed information.

3. Free admission, food, beverages, and other non-cash nominal benefits provided to you at any public or private conference, convention, meeting, social event, meal, or similar gathering, whether or not you provide any substantive service at the event. (Regulation 18932.4(f).) Although these items are not considered honoraria, they may be reportable gifts and subject to the gift limit.

4. Certain payments for transportation, lodging, and subsistence are not considered honoraria but may be reportable and subject to the gift limit. (Sections 89501(c) and 89506.) Travel payments are discussed below.

TRAVEL PAYMENTS

The Act and Commission regulations provide exceptions to the gift limit and honoraria prohibition for certain types of travel payments. (Section 89506; Regulations 18950-18950.4.)

The term “travel payment” includes payments, advances, or reimbursements for travel, including actual transportation and related lodging and subsistence. (Section 89501(c).)

Exceptions

The following types of travel payments are not prohibited or subject to any limit and are not reportable on a statement of economic interests (Form 700):

1. Transportation within California provided to you directly in connection with an event at which you give a speech, participate in a panel or seminar, or provide a similar service. (Regulation 18950.3.)
2. Free admission, refreshments, and similar non-cash nominal benefits provided to you during the entire event (inside or outside California) at which you give a speech, participate in a panel or seminar, or provide a similar service. (Regulation 18950.3.)
3. Necessary lodging and subsistence (inside or outside California), including meals and beverages, provided to you directly in connection with an event at which you give a speech, participate in a panel or seminar, or provide a similar service. In most cases, the exclusion for meals and beverages is limited to those provided on the day of the activity. (Regulation 18950.3.)
4. Travel payments provided to you by the State of California or by any state, local, or federal government agency which would be considered income and not a gift (i.e., payments for which you provide equal or greater consideration). (Section 89506(d)(2); Regulation 18950.1(d).)
5. Reimbursements for travel expenses provided to you by a bona fide non-profit, tax-exempt (501(c)(3)) entity for which you provide equal or greater consideration. (Section 82030(b)(2).)
6. Travel payments provided to you directly in connection with campaign activities. However, these payments must be reported in accordance with the campaign disclosure provisions of the Act. (Regulations 18950.1(c); 18950.4.)
7. Any payment for travel that is excluded from the definition of “gift” as discussed earlier in this fact sheet.

TRAVEL PAYMENTS

Continued

Reportable Payments Not Subject to Limit

The following travel payments are not prohibited or subject to the \$340 gift limit but may be reportable on a statement of economic interests (Form 700, Schedule F). If the travel payment would otherwise be considered a gift under the Act (i.e., you did not provide equal or greater consideration for the payment), the payment would be subject to the \$10 lobbyist/lobbying firm gift limit.⁴

1. Travel which is reasonably necessary in connection with a bona fide business, trade, or profession, and which satisfies the criteria for federal income tax deductions for business expenses specified in Sections 162 and 274 of the Internal Revenue Code. (Section 89506(d)(3); Regulation 18950.1(e).) For reporting purposes, these travel payments would be considered part of the salary, wages, and other income received from the business entity and would be reported on Schedule A-2 or C of Form 700.

2. Travel within the United States which is reasonably related to a legislative or governmental purpose — or to an issue of state, national, or international public policy — in connection with an event at which you give a speech, participate in a panel or seminar or provide a similar service. Lodging and subsistence expenses in this case are limited to the day immediately preceding, the day of, and the day immediately following the speech, panel, or other similar service. (Section 89506(a)(1); Regulation 18950.1(a)(2).)

Note that this exception is different than travel payments described earlier. Under the circumstances described in this paragraph, transportation outside California but within the United States is not subject to the \$340 gift limit but is reportable and can subject a public official to disqualification. On the other hand, transportation inside California in connection with a speech is not limited, reportable, or disqualifying. (Regulation 18950.3.)

In addition, the lodging and subsistence payments described in this paragraph can be provided both the day before and the day after a speech without being subject to the \$340 limit. However, payments for lodging and subsistence are reportable and subject to the lobbyist gift limit unless they are received directly in connection with the speech.

3. Travel **not** in connection with giving a speech, participating in a panel or seminar, or providing a similar service but which is reasonably related to a legislative or governmental purpose, or to an issue of state, national, or international public policy, and which is provided by:

^{4/} Under Article IV, Section 4(a), and Article V, Section 14(a), of the California Constitution, elected state officers are prohibited from receiving salary, wages, commissions or other earned income from a lobbyist, lobbying firm or person who, during the previous 12 months, has been under a contract with the Legislature.

TRAVEL PAYMENTS

Continued

- A government, governmental agency, foreign government, or government authority;
- A bona fide public or private educational institution defined in Section 203 of the Revenue and Taxation Code;
- A non-profit organization that is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code; or
- A foreign organization that substantially satisfies the requirements for tax-exempt status under Section 501(c)(3) of the Internal Revenue Code.

(Section 89506(a)(2); Regulation 18950.1(b).)

LOANS

Personal loans received by elected and appointed officials are subject to limits and other restrictions and, in some circumstances, a personal loan that is not being repaid or is being repaid below certain amounts may become a gift to the official who received it.

Limitations on Loans From Agency Officials, Consultants, and Contractors

You may not receive a personal loan that exceeds \$250 at any given time from an officer, employee, member, or consultant of your government agency or an agency over which your agency exercises direction and control. (Section 87460(a) and (b).)

In addition, you may not receive a personal loan that exceeds \$250 at any given time from any individual or entity that has a contract with your government agency or an agency over which your agency exercises direction and control. (Section 87460(c) and (d).)

Loan Terms

You may not receive a personal loan of \$500 or more unless the loan is made in writing and clearly states the terms of the loan. The loan document must include the names of the parties to the loan agreement, as well as the date, amount, interest rate, and term of the loan. The loan document must also include the date or dates when payments are due and the amount of the payments. (Section 87461.)

Loans Not Subject to Limits and Documentation

The following loans are not subject to these limits and documentation requirements:

1. Loans received from banks or other financial institutions, and retail or credit card transactions, made in the normal course of business on terms available to members of the public without regard to your official status.
2. Loans received by your campaign committee.
3. Loans received from your spouse, child, parent, grandparent, brother, sister, parent-in-law, brother-in-law, sister-in-law, nephew, niece, aunt, uncle, or first cousin, or the spouse of any such person unless he or she is acting as an agent or intermediary for another person not covered by this exemption.
4. Loans made, or offered in writing, prior to January 1, 1998. (Sections 87460 and 87461.)

Loans as Gifts

Under the following circumstances, a personal loan you have received may become a gift and subject to gift reporting and limitations:

1. If the loan has a defined date or dates for repayment and has not been repaid, the loan will become a gift when the statute of limitations for filing an action for default has expired.

LOANS

Continued

2. If the loan has no defined date or dates for repayment, the loan will become a gift if it remains unpaid when one year has elapsed from the later of:

- The date the loan was made;
- The date the last payment of \$100 or more was made on the loan;
or
- The date upon which you have made payments aggregating to less than \$250 during the previous 12 months. (Section 87462.)

Exceptions

The following loans will not become gifts:

1. A loan made to your campaign committee.
2. A loan described above on which the creditor has taken reasonable action to collect the balance due.
3. A loan described above on which the creditor, based on reasonable business considerations, has not undertaken collection action. (However, except in a criminal action, the creditor has the burden of proving that the decision not to take collection action was based on reasonable business considerations.)
4. A loan made to an official who has filed for bankruptcy and the loan is ultimately discharged in bankruptcy.
5. A loan that would not be considered a gift as outlined in Part I of this fact sheet (e.g., loans from certain family members). (Section 87462.)